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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2413 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether The

of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

Mrs. Zarinaben Naushar Khambhatta & Ors.

..Pet.(s)

Versus

State of Gujarat & Ors.

..Resp.(s)

Appearance:

Shri Prashant G. Desai, Advocate, for the Petitioners

Shri A.G. Uraizee, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 22/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No. 2 herein) on 15th March 1988 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 29194 square meters.

2. This litigation has somewhat chequered history. Petitioner No. 1 filed her declaration in the prescribed form under sec. 6(1) of the Act for and on behalf of petitioners Nos. 1 to 4 with respect to their holding within the urban agglomeration of Ahmedabad. It appears that petitioners Nos. 1 to 4 entered into two separate agreements to sell two different parcels of land in favour of two different co-operative housing societies. These co-operative housing societies have joined petitioners Nos. 1 to 4 in this petition as petitioners Nos. 5 and 6. It appears that all the petitioners together applied for exemption under sec. 20(1) of the Act with respect to the parcels of land agreed to be sold to the societies. It appears that, by one order passed on 25th May 1982 and the other on 27th May 1982, such applications for exemption came to be rejected. The copies of the aforesaid orders are annexed to this application as Annexure B (collectively). It appears that the orders at Annexure B (collectively) to this application were challenged before this Court by means of Special Civil Application No. 5585 of 1983. By the order passed on 1st May 1987 in the aforesaid writ petition, the orders at Annexures B (collectively) to this petition were quashed and set aside and the matter was remanded to the State Government (respondent No. 1 herein) for deciding the fate of the application made by the petitioners for exemption under sec. 20(1) of the Act after giving an opportunity of hearing to them. A copy of the order passed by this Court in the aforesaid writ petition is at Annexure C to this petition. It appears that the attention of respondent No. 2 was not focussed on the order of this Court at Annexure C to this petition. He therefore processed the declaration made by petitioner No. 1 under sec. 6(1) of the Act in due course. By his order passed on 15th March 1988 under sections 8(4) of the Act, he declared the holding of petitioners Nos. 1 to 4 to be in excess of the ceiling limit by 29194 square meters. Its copy is at Annexure D to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition.

3. It cannot be gainsaid that the application for exemption under sec. 20(1) of the Act for sale of lands to petitioners Nos. 5 and 6 will pale into insignificance in view of the binding ruling of the Supreme Court in the case of S. Vasudeva

v. State of Karnataka and others reported in AIR 1994 Supreme Court 923. It has been held therein that no exemption under sec. 20(1) of the Act can be granted with a view to transferring any land by the land-holder in favour of any other person. In that view of the matter, Shri Desai for the petitioners could not make any headway in his submission that respondent No.2 was not justified in proceeding with the matter on account of the order at Annexure C to this petition. Besides, the attention of respondent No. 2 was not focussed on the order at Annexure C to this petition.

4. It appears that the order at Annexure D to this petition has straightway been challenged before this Court without availing of the alternative remedy of appeal under sec. 33 of the Act. As rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondents, the petitioners should be relegated to the remedy of appeal for questioning the correctness of the order at Annexure D to this petition. At this stage learned Advocate Shri Desai for the petitioners submits that the appeal at this juncture after several years might not be entertained as time-barred.

5. It cannot be gainsaid that sec. 33 of the Act provides for condonation of delay in preferring appeal if a sufficient cause for the purpose is made out. Learned Advocate Shri Desai for the petitioners has urged that the petitioners have not availed of the remedy of appeal because respondent No.2 did not take into consideration the order of this Court at Annexure C to this petition and, since respondent No.2 herein was a party-respondent to the petition culminating into the order at Annexure C to this petition, the petitioners remained under an impression that the matter will not be proceeded further by respondent No.2 and under that impression the petitioners did not file any reply to the draft statement. It has also been submitted by learned Advocate Shri Desai for the petitioners that the petitioners have bona fide pursued their remedy before this Court. I think all these submissions can be urged before the appellate authority under sec. 33 of the Act for getting condoned the delay in preferring the appeal against the order at Annexure D to this petition. What is required of the petitioners is to make out a sufficient cause for condonation of such delay. If the delay is not condoned and if the petitioners feel aggrieved on that account, it would be open to them to move this Court for questioning the correctness of the order of refusing to condone such delay. This Court however would be disinclined to interfere with the order at Annexure D to this petition as the alternative remedy of appeal is available.

6. It is not possible for me to countenance the submission urged before me by learned Advocate Shri Desai for the petitioners to the effect that, since the petitioners remained

under an erroneous impression that the matter would not be proceeded with by respondent No.2 in view of the order at Annexure C to this petition, and since the petitioners did not remain present, the matter should be remanded to respondent No. 2 for giving an opportunity of hearing to them. The reason therefor is quite simple. The petitioners ought to have brought to the notice of respondent No.2 the order at Annexure C to this petition in response to several intimations given to them regarding the proceeding as transpiring from the impugned order at Annexure D to this petition. There is no contravention of principles of natural justice or the principle of audi alteram partem. In that view of the matter, the impugned order cannot and need not be upset. Respondent No. 2 cannot be directed to reopen the case on the application for review by the petitioners.

7. It cannot be gainsaid that the power of review is a creature of a statute. The Act does not confer on any authority any power of review except under sec. 34 of the Act. The power of revision thereunder is conferred on the State Government.

8. In view of my aforesaid discussion, I am of the opinion that this petition cannot be entertained on merits qua the impugned order at Annexure D to this petition. It would be open to the petitioners to challenge the impugned order at Annexure D to this petition by way of an appeal under sec. 33 of the Act.

9. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

10. At the oral request of learned Advocate Shri Desai for the petitioners, the operation of this order of mine is stayed for a period of six weeks from today to enable the petitioners to challenge this order of mine by means of an appropriate proceeding or to challenge the impugned order at Annexure D to this petition by way of an appeal under sec. 33 of the Act as advised.
